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REGULAR

NUMBER: 38.767

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTIONS 2, 7, 8, 38, and 54 OF CHAPTER 10, TITLE XI OF THE MILPITAS MUNICIPAL CODE.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by Councilmember _____ and was adopted (Second reading) by the City Council at its meeting of _____, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals and Findings.

- A. Pursuant to Government Code section 65853 and 65854, the Planning Commission of the City of Milpitas held a properly noticed public hearing August 10, 2005 to consider the amendments to Title XI, Chapter 4 and Chapter 10 of the Milpitas Municipal Code. In accordance with Government Code section 65855, the Planning Commission has rendered a decision in the form of a written recommendation, which was presented to the City Council prior to consideration of this Ordinance.
- B. Upon receipt of the Planning Commission's written recommendation, the City Council held a properly noticed public hearing on _____, 2006.
- C. The City Council finds that this Ordinance does not render Title XI, Chapter 10 inconsistent with the City of Milpitas General Plan.

SECTION 2. Section 38 of Title XI, Chapter 10 (Planning, Zoning and Annexation) of the Milpitas Municipal Code is hereby amended with the addition of the following new subsections:

Section 38-"MXD" Mixed Use District

38.07-3 A minimum of one hundred (100)-square feet on the ground floor and sixty (60) square feet on the second level and above of "Usable Open Space" shall be provided for each dwelling unit.

SECTION 3. Sections 2, 7, 8, 38, and 54, of Title XI, Chapter 10 (Zoning, Planning and Annexation) of the Milpitas Municipal Code are amended as follows:

Section 2 – Definitions

2.41-1.1 Gross Acreage

The total area within the boundaries of a legal lot or parcel, including any area proposed to be dedicated or reserved for public right-of-way. Adjacent lands already dedicated for public right-of-way, including public roadways, easements or other areas, shall not be included as part of the gross acreage. (Ord. 38.759 (part), 4/2/02)

Section 7 – "R3" Multi-Family High Density District

7.07.2 Landscape and Open Space Requirements

An average of two hundred square feet of usable open space shall be provided for each dwelling unit. "Usable open space" shall mean any open space, the smallest dimension of which is at least six (6) feet and which is not used as storage or for movement of motor vehicles: except that yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable open space when

properly developed for work, play or outdoor living areas. At least thirty (30) percent of required open space shall be contiguous to and provide for private usable open space of the individual dwelling unit. (Ord. 38.57 (part), 6/18/64; Ord. 38 (part), 3/15/55)

Section 8-“R4” Multi-Family Very High Density District

8.07-3 Park and Open Space Requirements for Residential Uses

Balconies and porches located above ground level with a minimum dimension of six (6) feet constructed for use by dwelling units shall be exempt from the useable open space dimension standards above and within in Section 2, and may be considered to satisfy usable open space requirements. Each dwelling unit shall be provided with private open space as follows:

- a. Balconies and porches (above ground level: minimum sixty (60) square feet; or
- b. Patios (at ground level): minimum one hundred square feet (Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)

Section 38 – “MXD” Mixed Use District

38.07-2 Park and Open Space Requirements for Residential Uses

A minimum of twenty-five percent (25%) of the total site shall be usable open space or recreational facilities. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas.

38.07-3 Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. Balconies and porches located above ground level with a minimum dimension of six (6) feet constructed for use by dwelling units shall be exempt from the useable open space dimension standards above and within Section 2, and may be considered to satisfy usable open space requirements. Each dwelling unit shall be provided with private open space as follows:

- a. Balconies and porches (above ground level: minimum sixty (60) square feet; or
- b. Patios (at ground level): minimum one hundred square feet (Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)

Section 54 – General Provisions

54.20-Density Bonus for Affordable Housing Developments (entire section)

54.20-1 Purpose. The Density Bonus regulations are intended to encourage the provision of affordable housing in the community by granting density bonuses and other incentives to developers of residential projects that construct or otherwise provide for housing units that will be available for purchase or rent by senior citizens and lower

income persons and households. The Density Bonus provisions are applicable in all zoning districts that allow residential development. This Ordinance is adopted in conformance with Chapter 4.3 of Title 7 of the Government Code, Section 65915, et seq.

54.20-2 Density Bonus Authorization. The City Council, after recommendation by the Planning Commission, may authorize an increase in allowable dwelling unit density for those residential projects that assist in meeting the lower income or senior housing needs of the community. When the Planning Commission and Council make a finding that a developer has complied with the requirements of Subsections 54.20-3 and 54.20-12 the City Council, after recommendation by the Planning Commission, may award a density increase, with the approval of the project. The applicant shall submit site and architectural plans for the project (per Section 42.04 of this Chapter) for review and approval in conjunction with the Planning Commission and City Council consideration of the Density Bonus application. The Planning Commission shall hold at least one public hearing, prior to making its recommendation to the City Council. Upon receipt of the recommendation of the Planning Commission, the City Council shall hold at least one public hearing, prior to any final action on an application. Notice of hearing shall be given in accordance with the provisions of Section 64 of this Chapter.

54.20-3 Density Bonus Conditions

- A. When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the city shall provide the applicant incentives or concessions for the production of housing units and childcare facilities as prescribed in this section.
- B. The city shall grant a density bonus and incentives or concessions described in Section 54.20-4 when the applicant for the housing development seeks and agrees to construct at least any one of the following criteria:
 - (1) Ten percent (10%) of the total units in a housing development for lower income households as defined in Section 50079.5 of the State Health and Safety Code.
 - (2) Five percent (5%) of the total units in a housing development for very low-income households as defined in Section 5015 of the State Health and Safety Code.
 - (3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the State Civil Code.
 - (4) Ten percent (10%) of the total dwelling units in a condominium project as defined in subdivision (f) or in a planned development project as defined in subdivision (k) of Section 1351 of the State Civil Code for persons and families of moderate income, as defined in Section 50093 of the State Health and Safety Code.
- C. If the housing development meets criteria (1), (2), or (3) above, the density bonus shall be an increase of 20% over the maximum allowable residential density under

the general plan and zoning ordinance. If the housing development meets criterion (4) above, the density bonus shall be an increase of 5% over the maximum allowable residential density under the general plan and zoning ordinance.

- D. If at least one of the above criteria is met, an additional density bonus shall be granted as per the following sliding scale:
- (1) An additional 2.5% density bonus for each increase of 1% Very- Low Income units above the initial 5% threshold;
 - (2) A density increase of 1.5% for each 1% increase in Lower-Income units above the initial 10% threshold; and
 - (3) A 1% density increase for each 1% increase in Moderate-Income condominium or planned development units above the initial 10% threshold.
- E. The total of the density bonuses pursuant to paragraphs C and D above shall not exceed 35% for the proposed housing development.

54.20-4 Concessions and Incentives

Any project that meets the minimum criteria specified in Section 54.20-3.B for a density bonus is entitled to concessions depending upon the amount of affordable housing provided as follows:

- (1) For projects that provide either 5% of the units affordable to Very Low-Income households, 10% of the units affordable to Low-Income households, or 10% Moderate-Income condominiums, the developer is entitled to one concession;
- (2) When the number of affordable units is increased to 10% Very Low-Income units, 20% Lower-Income units, or 20% Moderate-Income condominiums, the developer is entitled to two concessions; and
- (3) When the number of affordable units is increased to 15% Very Low-Income, 30% Low Income, or 30% Moderate-Income household condominiums, the number of concessions is increased to three concessions.

Requested concessions shall be approved unless the City makes either of the following findings in writing and based on substantial evidence.

- a. The concession is not required in order to provide for affordable housing costs as defined in State Health and Safety § 50052.2, or for rents for the affordable units pursuant to Section 54.20-13.
- b. The concession would have a specific adverse impact as defined in State Government Code § 65589.5(d)(2) upon the public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse

impact without rendering the development unaffordable to low- and moderate-income households.

54.20-5 Land Donation

A density bonus of 15% over the maximum allowable residential density under the general plan and zoning ordinance is available to projects that donate land for residential use. The land must satisfy all of the following requirements prior to granting the density bonus:

- (1) Have the appropriate general plan designation and zoning to permit construction of units affordable to Very Low-Income households in an amount not less than 10% of the units in the residential development;
- (2) Be at least one acre in size or of sufficient size to permit development of at least 40 units; and
- (3) Be served by adequate public facilities and infrastructure.

A density bonus based on land donation may be combined with the density bonus in Section 54.20-3; however, the maximum combined density bonus that can be granted is 35%. When the land is transferred, it must have all the permits and approvals necessary for the development of the Very Low-Income housing units. The land transfer shall occur prior to or concurrent with approval of the final subdivision map, parcel map, or residential development application. The land and affordable units must be subject to deed restrictions ensuring continued affordability. The city may require that the land be transferred to a developer instead of the city.

54.20-6 Parking Standards

If a project qualifies for a density bonus, the developer may request and the City must grant the following parking standards for the entire development project:

- (1) Zero to one bedroom-one on-site parking space
- (2) Two to three bedrooms-two on-site parking spaces
- (3) Four and more bedrooms- two and one-half on-site parking spaces.

These numbers are inclusive of guest parking and handicapped parking and may be tandem or uncovered but cannot be on street. The parking standards may be requested even if no density bonus is requested.

54.20-7 Waivers and Modifications of Development Standards

The City may not impose a development standard that makes it infeasible to construct the housing development with the proposed density bonus. In addition to requesting incentives and concessions, applicants may request the waiver of development standards and shall show that the waiver is necessary to make the housing units economically feasible. For the purpose of this section, development standards are defined as site or construction conditions that apply to a residential development pursuant to any local

policy, resolution or regulation. The requested waiver shall be approved unless the City makes either of the findings set forth in Section 54.20-4

54.20-8 Determination of Maximum Allowable Densities.

The maximum allowable density per gross acre prior to applying the density bonus shall be as specified in the Milpitas Zoning Ordinance for the applicable zoning or overlay district or PUD process, as listed in Sections 8.05-2 (R4 district), 22.04-7 (TC district), 38.05-4 (MXD district), 43.05 (TOD overlay district), and 54.07-6(c) (PUD process for R3 district) of this Chapter, and in City Council Resolution No. 3489 as amended from time to time (R1, R2 and R3 districts).

54.20-9 Applicability. The density bonus referred to in this Section shall apply to housing developments consisting of five or more dwelling units.

54.20-10 Unit Type and Location. All affordable units shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the non-affordable units in the project, and shall be comparable with the non-affordable units in terms of appearance, materials and finished quality. The Planning Commission may recommend to the City Council modifying the requirements as to unit size or type, if it is found that such a modification would better serve the affordable housing need of Milpitas.

54.20-11 Agreement. Prior to final building inspection and occupancy for a project containing affordable units, the applicant shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the affordability requirements. The agreement shall be approved by the Milpitas City Attorney prior to recordation.

54.20-12 Retaining Affordability. A developer shall agree to, and the City shall insure continued affordability of, all lower or very low-income density bonus units for thirty (30) years or a longer period of time, if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If the City does not grant at least one (1) additional concession or incentive, in addition to a density bonus as specified in Subsection 54.20- 3, the developer shall agree to, and the City shall ensure continued affordability for a minimum of ten (10) years of all lower or very low income housing units receiving a density bonus.

54.20-13 Affordable Rents. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of sixty (60%) percent of the Santa Clara County median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30%) of fifty (50%) percent of County median income. (Ord. 38.761 (part), 5/20/03).

54.20-14 Relation to statute. Density bonus requirements not specified in these regulations shall be governed by the State Density Bonus Law, Government Code section 65915, et seq.

Section 4. PUBLICATION AND EFFECTIVE DATE.

Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.

Section 5. SEVERABILITY

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

General Plan Amendment No. GP2005-8

G l o s s a r y o f P l a n n i n g T e r m s

Acre, Gross. “The total area within the boundaries of a legal lot or parcel, including any area proposed to be dedicated or reserved for public right-of-way. Adjacent lands already dedicated for public right-of-way including public roadways, easements or other areas shall not be included as part of the gross acreage.”

- Completion of Phase I and Approval of the work plan for Phase II of the Transit Area Specific Plan to allow higher densities within ¼ mile of Light Rail and future Montague/Capitol BART Transit Stations;
- Financial assistance for affordable housing projects, Interim Senior Center renovations and ESO home improvements to preserve existing affordable housing stock, and help improve health and safety conditions for physical limited persons;
- Funding to assist 21 different public services agencies and housing providers; and
- Milpitas' Single Family Rehabilitation Loan Program

The CAPER has been advertised for public review and comments for 15 days (August 22-September 7, 2005). Copies of the CAPER were sent to all Service and Housing Providers that received CDBG funds from the City and other interested parties. Copies were also made available at City Hall and Public Library. Staff has received two public comments.

Recommendation:

1. Close the public hearing.
 2. Adopt the Consolidated Annual Performance Evaluation Report for FY 2004-2005.
3. **Authorize Entertainment Permit for St. John the Baptist Church "Autumn Festival" on October 14-16, 2005 (Staff Contact: Mary Lavelle, 586-3001)**

Background: St. John the Baptist Catholic Church submitted an application for an Entertainment Event Permit to hold its first ever "Autumn Fest" on church grounds at 279 So. Main Street (between Abel and Main Streets) over the weekend, Friday – Sunday, October 14-16, 2005. Hours will be from 5:00 – 11:00 PM on Friday, 11 AM to 11PM on Saturday, and 11 AM to 5 PM on Sunday. The festival will consist of many activities for the community including carnival rides for children, food and beverage including beer and wine, music, silent auction, and pancake breakfast.

The application was reviewed and approved by the various City departments and the public hearing advertised as required by municipal code. Appropriate conditions were stated by the Planning, Building, Finance and Police Departments, as noted in the agenda materials.

For your information, Recreation Services has advised that the City-sponsored "Harvest Festival" will take place on Saturday, October 15 at Cardoza Park from 11 AM – 4 PM.

Recommendation:

1. After public testimony is heard, move to Close the Public Hearing.
 2. Move to approve an Entertainment Permit for St. John The Baptist Catholic Church's "Autumn Festival" on October 14, 15, and 16, 2005.
4. **Introduce Ordinance No. 38.767 Amending Title XI Chapter 10 (Planning, Zoning and Annexation) and Chapter 1 (Subdivision Ordinance) Text of the Municipal Code (P-ZT2005-2) (Staff Contact: Kim Duncan, 586-3283)**

Background: Ordinance No. 38.767 was initiated by staff to modify the zoning code for the purpose of eliminating inconsistencies, improve its effectiveness, clarify use determinations, and simplify areas of the ordinance that have been difficult to understand and interpret. The purpose for these modifications is to improve the "use friendliness" of the zoning code.

A draft version of Ordinance 38.767 was introduced to the Planning Commission at their meeting on August 10, 2005 as a public hearing item. At the meeting, Jim Murar, applicant for Parc Place, voiced concerns regarding the proposed text changes to the Private Usable Open Space Requirements for Residential Uses (Section 8.07 and Section 38.07). The Commission recommended removing the item from the proposed amendments and requested future

clarification from staff. Staff presented revised language for this item to the Planning Commission at their August 24, 2005 meeting. The Planning Commission had concerns regarding the minimum dimension of balconies and porches and recommended the minimum dimension be increased from 4 ½' x 4 ½' (20.25 square feet) to 6' x 4 ½' feet (27 square feet) for private usable open space requirements. With this revision, the Planning Commission recommends the City Council adopt a resolution approving the Negative Declaration (EA2005-3), and the proposed zoning and subdivision ordinance text amendments.

A total of twenty-six (26) modifications and clarifications are contained within this package of amendments. Briefly, these are as follows:

1. definition of "food store";
2. definition of "vocational school";
3. definition of "redevelopment";
4. definition of "infill";
5. definition of "gross acreage";
6. clarification of "efficiency apartment" definition;
7. definition of "open space recreational facility";
8. exempt small and large family childcare from home occupation section;
9. clarify permit notification requirements for large family day care homes;
10. correct scribes error in single family residential (R1-6) section;
11. clarify types of vehicle sales and repair in Mixed Use (MXD) zoning district;
12. clarify condominium conversion procedure;
13. update proper reference in Section 54;
14. clarify parkland dedication in Subdivision Ordinance;
15. remove Agricultural Residential (AR) zoning district from ordinance;
16. codify business-to-business printing in industrial districts;
17. codify after-market auto part sales in Highway Services (HS);
18. codify parking ratio for athletic facilities;
19. codify wholesale and breeding of tropical fish;
20. add wholesale businesses to Highway Services;
21. move conditional uses listed in Section 57 to appropriate zoning districts;
22. reduce minimum usable open space requirement and modify definition in Multi-Family High Density (R3) district;
23. change approval authority for applications with density bonus;
24. clarify guest parking discrepancies in R3, R4 and MXD districts;
25. update density bonus section; and
26. expand private open space requirements in R3, R4 and MXD districts.

The above text amendments are further discussed in the Background Report and Summary Matrix, and a clean version of Ordinance No. 38.767, all of which are included in the City Council's agenda packet. In order to allow the Council to take an additional public testimony, should it so desire, this item has not been placed on the consent calendar.

Recommendation:

1. Close the public hearing.
2. Adopt the draft Negative Declaration (EA2005-3).
3. Waive reading beyond title.
4. Introduce Ordinance No. 38.767.

XIV. UNFINISHED BUSINESS

5. **Fluoride Update Status Report (Staff Contact: Darryl Wong, 586-3345)**

3. Authorize Entertainment Permit for St. John the Baptist Church "Autumn Festival" on October 14-16, 2005

City Clerk Mary Lavelle presented the request for an Entertainment Permit. St. John the Baptist Church planned to hold an Autumn Festival on its church grounds over the weekend of October 14, 15, and 16. Mrs. Riza Santoro, Chair of the Committee planning the event, was also present.

All departments had reviewed the request and provided approval with conditions. Ms. Lavelle reminded the City Council that the City would host "Harvest Festival" on Saturday, October 15 from 11 AM to 4 PM at Cardoza Park on the same weekend.

Mayor Esteves opened the public hearing, inviting speakers (none heard).

(1) Motion: to Close Public Hearing

Motion/second: Councilmember Giordano/ Councilmember Livengood

Motion carried unanimously by a vote of: AYES: 5
NOES: 0

(2) Motion: to approve the Entertainment Permit for the church's Autumn Festival

Motion/second: Councilmember Livengood / Vice Mayor Gomez

Motion carried unanimously by a vote of:

	AYES: 5
	NOES: 0

4. Introduce Ordinance No. 38.767 Amending Title XI Chapter 10 (Planning, Zoning and Annexation) and Chapter 1 (Subdivision Ordinance) Text of the Milpitas Municipal Code (P-ZT2005-2)

Planning Director Tom Williams presented the Ordinance, stating it would provide clarity to the City's zoning code. The Planning Commission conducted two public hearings on the zoning amendments and 26 changes were recommended.

Planner Dennis Carrington explained the changes, stating that 22 were minor “clean up” items. He delineated these briefly (list of the amendments was provided in the staff agenda report).

The four major items in the proposed Ordinance deal with the following:

- 1) Gross Acreage definition in the zoning ordinance
- 2) Private Open Space Recreational Facilities (balcony space)
- 3) Density Bonus (new law effective 1/1/05, maximum 35% bonus could be granted)
- 4) Move Section 57 Conditional Uses to each appropriate zoning district (rather than catch-all), and then eliminate that section of the code altogether

Questions arose about the open space issue on amendment No. 22, reduce minimum usable open space requirement and modify definition in multi-family high density (R3) district. While 6 feet was discussed as the minimum, staff suggested the City Council could adopt guidelines as short as 4.5 feet minimum with regard to balcony length (open space).

Mayor Esteves opened the Public Hearing and invited speakers.

James Murray, of S. Milpitas Blvd, stated he was a developer in the City. He commended staff in their efforts to update the zoning code, paying close attention to details of the existing code that needed updating.

No further speakers were heard.

(1) Motion: to close Public Hearing

Motion/Second : Councilmember Giordano/ Vice Mayor Gomez

Motion carried unanimously by a vote of:

AYES: 5
NOES: 0

(2) Motion: Move to accept proposed changes by adoption of the Negative Declaration for project EA 2005-3. Motion included the change from 6 to 4.5 ft for open space, in the R3, R4, MX 3 districts.

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4
NOES: 1 (Esteves)

(3) Motion: to waive the first reading beyond the title

Dennis Carrington read the title of Ordinance No. 38.767 "Amending Title XI Chapter 10 (Planning, Zoning and Annexation) and Chapter 1 (Subdivision Ordinance) Text of the Municipal Code (P-ZT2005-2)"

Motion/Second: Vice Mayor Gomez/ Councilmember Polanski

Motion carried unanimously by a vote of:

AYES: 5
NOES: 0

(4) Motion: to Introduce Ordinance No 38.767 (as amended for 4.5 ft on deck size)

Councilmember Livengood / Councilmember Polanski

Motion carried by a vote of:

AYES: 4
NOES: 1 (Esteves)

UNFINISHED BUSINESS

5. Fluoride Update Status Report

Principal Engineer Darryl Wong presented this issue. In addition, Dr. David Nelson of the State Department of Health and Dr. Marty Fenstersheib, the Santa Clara County Health Officer, were present to address the Council on fluoride issues. While fluoridation was originally due to begin at the end of September, a low supply of the fluoride product had delayed the start date to sometime later in the fall.

Mr. Wong reviewed the status of fluoride in the City's water supply currently, noting there was a tiny amount in water now. The San Francisco Public Utilities Commission – the City's main supplier of residential water – would like to have fluoride at the level of one part per million in the water, for the best protection of teeth. The SFPUC will have all its customers receive fluoridated water over the next few years. In fact, Milpitas is one of the last municipalities in the Bay Area to receive fluoridation.

SFPUC provides water to a portion of the City (mostly all residential customers) while other areas (mostly industrial customers) receive Santa Clara Valley Water District water.

Residents were urged to call 586-3077 at City Hall if they have questions on this issue.

Dr. Nelson, of the county health, spoke supporting fluoridation of water.

Dr. Fenstersheib, Health Officer for the County of Santa Clara, conducted studies on children in public schools and visits to dentist. It revealed that 20% of the County's children had never seen a dentist. He strongly supported the change in the City's water.

Motion: Note receipt and file of report on fluoridation.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: New Business

Report prepared by: Carrington/Duncan

Public Hearing: Yes: X No:

Notices Mailed On: N/A

Published On: 8/27/05

Posted On: N/A

TITLE: **AMENDMENT TO THE MILPITAS GENERAL PLAN NO. GP2005-8 TO DEFINE THE TERM "ACRE, GROSS".**

Proposal: Discussion of proposed general plan amendment for the definition of "Acre, Gross".

Location: Citywide

RECOMMENDATION: Recommend to the City Council amendment of the definition of "Acre, Gross" in the Milpitas General Plan.

Applicant: City Initiated

Attachments: Applicable General Plan and Zoning Ordinance section.

BACKGROUND

On August 10, 2005, the Planning Commission recommended to the City Council adoption of a comprehensive, 26-item zoning ordinance text amendment (Ordinance 38.767), which included a revised definition of "Gross Acre" (Item 5). On September 20, 2005, the City Council introduced Ordinance 38.767 and adopted the associated Negative Declaration (EA2005-3). Subsequently, staff conducted additional research on the General Plan glossary definition of "Acre, Gross", and is proposing a General Plan amendment to modify the definition. State law requires consistency between the General Plan and Zoning Ordinance, therefore staff is also recommending that the previously approved zoning ordinance definition of "Gross Acre" be modified to reflect the proposed General Plan definition for clarity and consistency between the documents.

DISCUSSION

The existing definition of "Acre, Gross" in the General Plan and "Gross Acre" in the Zoning Ordinance is **"Area of a site calculated to the centerline of bounding streets and other public rights-of-way."** This definition implies that the development would be "new" development and

that roads and other rights-of-way internal to and associated with the development would be constructed at the same time as the residences. The existing definition of Gross Acre currently provides developers with acreage that is not under their ownership (i.e. out to the centerline of a street that has already been dedicated to the City). The purpose for this definition change is to accurately compute the density using the land lying within actual property lines.

Proposed definition of “Acre, Gross:

The definition proposed for “Acre, Gross” is **“The total area within the boundaries of a legal lot or parcel, including any area proposed to be dedicated or reserved for public right-of-way. Adjacent lands already dedicated for public right-of-way including public roadways, easements or other areas shall not be included as part of the gross acreage.”**

Redevelopment means the construction or erection of other buildings or structures thereon, including infill development. It is implied that parklands, future streets and public easements within a project’s property lines would be included in the definition of “Acre, Gross”. This revised definition would not penalize developers of raw land and would provide development potential reflecting the availability of already dedicated and improved facilities in redevelopment areas.

The proposed zoning code amendment for the definition of “Gross Acre” (Item 5) approved by the Planning Commission at their August 24, 2005 meeting needs to be consistent with this general plan amendment as required by state law. The proposed definition of “Acres, Gross” needs to be added to the corresponding zoning ordinance amendment going to the City Council.

ENVIRONMENTAL REVIEW

On September 20, 2005, the City Council adopted Initial Study and Negative Declaration No. EA2005-3 for the proposed Zoning and Subdivision Ordinance text amendments (ZT2005-2). In addition, it can be seen with certainty that there is no possibility that the change to the definitions of “Acre, Gross” and “Gross Acre” may have a significant effect on the environment because there will be a slight decrease in residential yields, therefore the project is exempt from the provisions of the California Environmental Quality Act (CEQA).

RECOMMENDATION

Close the Public Hearing. Recommend the following to the City Council:

1. Amend the Milpitas General Plan definition of “Acre, Gross” as defined in the staff report.